BANKRUPTCY—PRIORITY TO WORKMEN AND SERVANTS.—Bankrupt milk company engaged claimants to haul milk from surrounding producers to the factory, payment to be made according to the amount hauled, with a fixed minimum, the amounts per hundred paid to claimants being deducted from the price paid to the producers; the claimants had their own routes, supplied their own teams and equipment, and were entitled, if the amount of milk hauled warranted, to engage assistants. §64b of the Bankruptcy Act gives priority to claims for wages due to "workmen, clerks, or servants." *Held,* that though claimants performed services and engaged in manual labor, they were not "workmen" or "servants" within the meaning of the act. *In re Footville Condensed Milk Co.,* 237 Fed. 136.

Subordination and personal subservience to the employer, the element which, says the court, affords the ultimate test, is lacking in this case, just as it is in the case of draymen, cabmen, expressmen, or other independent contractors. The relation of master and servant excludes the right to assign or delegate the performance of the obligation assumed. Using one's own wagons, tools, etc., does not alone remove one from the servant to the independent contractor class. *In re Yoder,* 127 Fed. 894; *Sproks* v. *Lackawanna Dairy Co.,* 189 Fed. 287. Neither the editor of a newspaper, nor the manager of a business, even if he incidentally performs menial or clerical service or makes sales, is a workman or servant—although they are *ultimately* subservient to their employers. *In re Greenberger,* 203 Fed. 583; *In re Zotti,* 178 Fed. 287; *In re Crown Point Brush Co.,* 200 Fed. 882; *Blessing* v. *Blanchord,* 223 Fed. 35; *In re Continental Paint Co.,* 220 Fed. 189. But a travelling salesman paid by way of commissions, or a bookkeeper or steward—though incidentally serving as directors or officers—are servants. *In re New England Thread Co.,* 158 Fed. 778; *In re H. O. Roberts Co.,* 193 Fed. 294; *In re Swan Co.,* 194 Fed. 749. It is difficult exactly to define the degree of, or proximity of subservience to the ultimate source of authority necessary to place one in one class or another.

BANKRUPTCY—PROMISES MADE AFTER FILING OF PETITION.—Defendant had been adjudicated a voluntary bankrupt, plaintiff being one of his creditors. Defendant, wishing to obtain money to effect a composition, promised to pay plaintiff's claim in full if the latter would assist him; plaintiff accordingly endorsed defendant's note for the amount needed, and the composition was carried through. After discharge, defendant repeated his promise, but without further consideration. Defendant paid the note, but refused to pay the balance of plaintiff's claim, and pleaded his discharge when sued by plaintiff. *Held,* that the promise to pay the balance of plaintiff's claim was fraudulent and void. *Lieblein* v. *George,* (Mich. 1916) 160 N. W. 538.

In *Zavelo* v. *Reeves, 227* U. S. 625, 57 L. Ed. 676, 33 Sup. Ct. 365, the Supreme Court of the United States, in a case involving facts apparently identical, held that the promise was good and was not discharged, because made after the filing of the petition. The Michigan Supreme Court does not refer to *Zavelo* v. *Reeves,* and its decision is explicable only on the assump-

tion that its attention was not called to that case by counsel. As to the court's statement that defendant's promise was fraudulent and void, it is only necessary to answer, with the *Zawelo* case, that though an advantage accrued to the plaintiff as the result of the advancement, the pleadings do not show that it came as the result of fraud or collusion.

CARRIERS—PERSONAL INJURY.—Deceased boarded a pay-as-you-enter car, which was so crowded that he, together with many others, was compelled to ride upon the rear platform, from which he was thrown and killed by a sudden lurch of the car. His wife brings this action, and appeals from a directed verdict for defendant below. *Held,* it was error for court below to direct a verdict for defendant. *Larskowski* v. *Detroit United Ry.,* (Mich. 1916) 159 N. W. 530.

Plaintiff in this case presented a sufficient case for the consideration of the jury, inasmuch as the deceased was riding on the platform on the implied invitation of the defendant. He was admitted when the interior was full, and this was evidence of negligence on the part of defendant, but was not negligence per se in deceased. The question should have been submitted to the jury. In the case of *Camden, etc. Ry.* v. *Hoosey,* 99 Pa. 492, the Pennsylvania court held that the plaintiff was guilty of such negligence in standing on the platform for several minutes as to defeat his right of recovery for injuries resulting from being pitched therefrom, even though every seat on the train was taken, and the aisles crowded, for it appeared that he could have found standing room inside the cars. The court stood four to three on the point. It was intimated that had he been "compelled thereto by circumstances," it would have been a question for the jury. Most courts disapprove of this strict ruling, due to a consideration of the congested condition of traffic which prevails today. Failure to provide seats was held to prevent a company from taking advantage of a rule prohibiting passengers from standing on the platform in *Willis* v. *Ry.,* 32 Barb. 399. And the general holding is that if the company accepts one as a passenger on the platform or steps, even though he might have found standing room inside, he is not guilty of such negligence as defeats his right of recovery. *Anderson* v. *Ry.,* 42 Ore. 505, 71 Pac. 659. And although some courts hold a company to be negligent if it permits such overcrowding as makes it necessary for passengers to ride on the platform (*Stuchly* v. *Ry.,* 182 Ill. App. 337), the general rule is that the company is not liable per se for injury due to overcrowding on the platform, but only for want of due care in preventing such injuries as might reasonably be expected to result from such overcrowding. This rests on the theory that the public today acquiesces in overcrowding. *Lehberger* v. *Ry.,* 79 N. J. Law 134, 74 Atl. 272; *McCumber* v. *Ry.,* 207 Mass. 559, 93 N. E. 698; *Anderson* v. *Ry.,* supra. But allowing passengers on the platform, the company owes them a degree of care proportionate to the danger to which they are exposed. *LeBarge* v. *Ry.,* 138 Ia. 691, 116 N. W. 816. In the case of *Norvell v. Ry.,* 67 W. Va. 467, 68 S. E. 288, the company was held liable for injuries to one necessarily on the platform, unless such passenger had contributed to the injury by his own negligence, thus holding